DOCUMENT RESUME

ED 379 752 EA 026 494

AUTHOR Menacker, Julius
TITLE Legislation Affecting School Crime and Violence.
PUB DATE 94
NOTE 15p.; Paper presented at the Annual Meeting of the National Organization on Legal Problems of Education (San Diego, CA, November 17-19, 1994).
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Court Litigation; *Crime; Elementary Secondary Education; *Federal Legislation; *Prevention; Punishment; School Safety; School Security; *State Legislation; Violence

ABSTRACT

National polls of public attitudes toward public education consistently rank school safety and drug abuse at the top of the problem list. This paper describes some federal and state legislative responses to the problems and offers a preventative approach. Federal legislation has taken the form of two major statutes--the Comprehensive Drug Abuse Prevention and Control Act (1970) and the Gun Free School Zones Act (1990). States have most frequently passed laws to deal with drug abuse, assault and battery, weapons possession, school vandalism/property damage, and parental responsibility. The upsurge in school crime and violence has led to a large amount of disparate legislation among states. A review of state legislation indicates that two trends have emerged: (1) increased penalties for school-related crimes; and (2) the assignment of penalties to parents of students who commit criminal acts. Florida's comprehensive approach to drug abuse, school crime, and violence is described as an example of a preventative approach to the problem. Florida has passed legislation that: authorizes state and local governments to develop comprehensive, community-based programs and services for children and families; calls for the development of partnerships to form alternative educational programs, substance abuse programs, and community services; authorizes the creation of county juvenile-justice councils; establishes a trust fund for school districts to develop alternative education and staff inservice-training programs; and authorizes the creation of an interagency task force to reduce juvenile crime through a coordinated overlay of preventative services. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 379 752

LEGISLATION AFFECTING SCHOOL CRIME AND VIOLENCE

Julius Menacker

Paper presented at the Annual Meeting of the National Organization on Legal Problems of Education, November 17-19, 1994, San Diego, CA.

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

J. Menacker

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

EA 026 494

BEST COPY AVAILABLE

LEGISLATION AFFECTING SCHOOL CRIME AND VIOLENCE

To say that school crime and violence have become national concerns is to state the obvious. Even so, just to document the severity of the problem, note that the annual Phi Delta Kappa polls of the public's attitudes toward public education consistently rank school safety and drug abuse at the top of the problem list, and major newspapers consistently carry stories about it.

FEDERAL RESPONSE

In 1970 Congress passed the "schoolyard statute" (Comprehensive Drug Abuse Prevention and Control Act), which created a "drug-free" zone of 1,000 feet around schools, with enhanced penalties for violation. This federal statute has already survived court tests as to its constitutionality. For example, in U.S. v. Wake (1991), the 5th federal circuit (Texas) held that the law applied whether or not the accused intended to distribute illicit drugs at a school or to school children or to others not connected with the school. Wake was sentenced to 327 months imprisonment, eight years of supervised release, a fine of $160,000, and a $200 special assessment.

Then, in 1990, Congress passed the Gun Free School Zones Act. The law makes it illegal for a person to possess a firearm in a place he/she knows, or reasonably should know, is within a school zone. As with the "schoolyard drug statute," a school zone is defined as on or within a thousand feet of school grounds. Again, the arena for

testing its validity is the Fifth Circuit. In 1993, the Fifth Circuit held, in U.S. v. Lopez that conviction for an individual possessing a firearm in a school zone under this law was invalid as it was beyond the reach of Congress under the commerce clause, and even if a conviction might have been sustained if the government alleged and proved the offense had a nexus to commerce, the defendant was still entitled to reversal of the conviction, since the indictment did not allege any connection to interstate commerce. The U.S. Supreme Court has granted certiorari in April, 1994 (114 S.Ct. 1536) to this case. Finally, the Fifth Circuit (Texas) decided another school violence case in November, 1994 by a 2-1 judicial panel majority. It found that school principals were not liable under 42 U.S. 1983 for injuries sustained by a student shot be another student in a school that did not provide metal detectors. In contrast, an Illinois trial judge in Chicago decided in September to dismiss charges against three students indicted for having weapons in school because the metal detectors and close police surveillance used to find the drugs violated the Fourth Amendment privacy rights of the students.

STATE LAW

Drug-Abuse Legislation

State legislatures have followed the federal "schoolyard statute" initiative with enthusiasm. A Westlaw search and information from the National School Safety Center produced 34 states that have followed the federal

lead and established their own drug-free school zones. While there is great variation in these laws, one consistent approach found among them was to specify offenses and penalties for violations in school-related contexts, and to increase penalties for offenses which are school-related. Many of these states (Illinois and Texas) have statutory provisions requiring principals to report suspected illegal acts to law enforcement authorities, and provide immunity from civil damage suits to the school officials making these reports.

The main features of the state laws, most of which are modeled after the federal one, are setting a "drug free" zone around schools that varies among states from 1,000 feet around a school to 300 feet, and may or may not include school bus stops and busses. There is greater variation in regard to the violators addressed, which vary from any student or drug distributor, to just drug distributors over 18 years of age. The same variations appear in regard to penalties, which range from expulsion for students selling or using drugs in Texas to imprisonment for selling drugs, without distinction to age or student status in New Jersey. At least three states (Illinois, Texas and Arkansas) have enacted legislation addressing modern technology. They have laws banning students from possessing paging devices in school, except for medical reasons approved by school authorities.

Assault and Battery

Sixteen states were found to have statutes addressing crimes of school-related assault and battery. Some states provide that school-related assault and battery are automatically upgraded to aggravated assault and batter, with correspondingly more severe penalties. California and Illinois law provide fines of $2,000 and $1,000 respectively and/or imprisonment for one year. Similarly, Florida statute provides heightened penalties for a parent or other person committing assault or battery on a school employee on when the employee is on school property or conducting school business. At the other end of the spectrum are states where the penalties range from removal from class, suspension or expulsion.

Weapons Possession

Statutes addressing possession of weapons were found in 37 states. In some cases, the prohibition applies to students, and in other cases to any person, and in one case (Oklahoma) to custodial parents or guardians. Also, while some statutes only specify barring weapons from campus, others specifically extend the ban to school functions, conveyances and other school property. As with assault and battery, penalties vary from suspension or expulsion to treatment as an adult felon, with imprisonment as among the penalties. An example of a detailed statute is Illinois, where knife and blackjack are included among prohibited weapons, and possession of such weapons is illegal within

1,000 feet of school property. Further, Illinois law specifies automatic transfer from juvenile to criminal court for minors (14-16) using weapons on school grounds and/or against persons known to be school employees. The constitutionality of this legislation was tested in the Illinois court, where it survived challenges to equal protection and due process violations.

Texas law takes special pains to identify prohibited weapons. The list of illegal weapons includes explosives, firearms (machine gun, short-barrel firearms, firearm silencers, switchblade knives, knuckles, armor-piercing ammunition, chemical dispensing devices, and zip guns. Illegal knives are further defined as blades over 5 1/2 inches, or a hand instrument that if thrown can cut or stab someone. Clubs are also prohibited, and defined as including blackjacks, nightsticks, tomahawks, and mace.

Maryland law provides for a first offense of school weapons possession by any person to be punishable by a $1,000 fine or up to three years confinement jail. The penalties increase for 2nd and 3rd offenses to a maximum of 5-10 years imprisonment. Louisiana law provides for "imprisonment at hard labor for not more than five years" for any student or non-student possessing a firearm on school grounds. Among the most unusual pieces of legislation uncovered on this topic is the California provision allowing students to possess weapons with written permission from school authorities. Additional

illustrations of state laws affecting weapon possession violations and penalties, going from most to least severe are:

ARK: Handgun possession upon school property or bus punishable by 6 years imprisonment or a $10,000 fine & sentence cannot be suspended, probated or treated as a first offense. A fourth offense carries 8-15 years imprisonment.

MONT: Possession of a weapon with the purpose to commit a felony on or near school property is punishable by 10 years in the state prison and/or $50,000 fine.

IL: Any person over 18 who sells, gives or delivers a weapon to any person under 18 in or on the schools real property, on transportation or a related activity is sentences to 2-5 years imprisonment.

ALSKA: Knowingly possessing firearm capable of being concealed on one's person within school grounds without permission after a felony conviction is punishable by maximum of 10 years imprisonment or a fine of $50,000. For persons without previous convictions, the maximum penalty is 90 days imprisonment or a fine of $1,000.

ARIZ: Possession of a handgun on school grounds is punishable by a maximum of 6 months incarceration or a fine of $2,500.

W.VA: Possession or carrying or causing the possession or carrying by others on school premises punishable by 6 months in county jail and/or $1,000 fine.

N DAK: Possessing a firearm at school or school functions punishable by 30 days in jail and/or $500 fine.

School Vandalism/Property Damage

Twelve states were found to have laws related to school vandalism/property damage. The range of penalties assigned by states for school vandalism are very dramatic. Some (California, Colorado, Indiana, Kentucky, Tennessee) require only student suspension or expulsion, while others (Mississippi, Pennsylvania) have penalties ranging from fines of from 50 to one thousand dollars and/or imprisonment for up to six months (Pennsylvania) to Mississippi's law providing for from two to 20 years imprisonment for persons willfully and maliciously causing school property to burn or explode. Mississippi law also carries a penalty of a fine up to $5,000 and/or imprisonment for up to five years for school damages exceeding $300.

Legislation Directed at Parents

State legislatures have despaired of punishments directed at students as being sufficient to curb school crimes, and, beginning in the 1970's, began directing legislation toward enforcing parental control of students, along with curbing parental misbehavior. Laws directed at parental verbal abuse against school staff have been ruled unconstitutional in California, Florida and Kentucky (Ketchens v. Reiner Cal, 1987; Kentucky v. Ashcraft, 1985; McCall v. Florida, 1978) on grounds of inhibiting free expression or the vagueness of the statutes.

Another approach has been laws creating parental financial responsibility for offenses committed by their children. Many Illinois local governments have passed legislation making parents liable for damages resulted from vandalism, drunk driving and related offenses. Hawaii legislation provides that parents or guardians are liable for restitution for vandalism committed by pupils under their care. Oklahoma law makes parents liable for administrative costs of $200 and/or up to 40 hours of community service if their children are found to possess weapons on school property. Texas law makes parents liable for property damage caused by their children up to $15,000 plus fees, court costs and attorney's fees. Finally, California has a law making parents liable for having "reasonable care, supervision, protection and control over their minor child."

This type of state legislative response to juvenile and school-related crime has been strongly criticized as both ineffective and naive. The reasoning is that for many delinquents, parents do not or cannot have effective control over their children, and it places an unequal burden on poor families. In the view of one analyst: "poverty or other circumstances of disadvantage that complicate parental responsibility statutes have led policy makers to seek other alternatives that will force reluctant parents to take control of the upbringing of their children" (School Safety, Fall 93). There are also problems of these statutes passing

court tests. For example, the first test of the California law resulted in the charges being dismissed.

SCHOOL REGULATIONS

Another avenue that carries legal force in the fight against school crime and violence is school board regulation. The New York Times recently reported that Charlotte, N.C. students in some schools will not be able to carry book bags from class to class because they can conceal firearms, Corpus Christi Texas students will have smell-sensitive dogs greet them at school, and new San Diego schools will not have student lockers as a means of preventing contraband entering the schools. Further, in many suburban Chicago districts, "zero-tolerance" regulations have been enacted whereby students caught using or possessing drugs, alcohol or weapons are immediately suspended or expelled, regardless of any extenuating circumstances, including the past records of students. Court challenges to these "zero-tolerance" rules, and related school anti-crime rules, are beginning to crowd court dockets.

EVALUATION

The upsurge in school crime and violence has led to a large amount of disparate legislation among states. One trend that has emerged in increasing penalties for school-related crime from penalties for the same infractions when not school-related. Examples of this are: (1) the Illinois policy upgrading school-related assault and battery to

aggravated assault and battery; (2) the Tennessee statute allowing for treble damages in a civil cause of action for intentional assault on school personnel during school hours or functions; (3) Illinois and Michigan laws allowing for a prison term up to twice the maximum for illicit drug violations that are school-related; and (4) the Arkansas law that disallows suspended or probated sentences for any person found to possess a handgun on school property or a school bus. Along with the California statute allowing school permission for students to carry guns, one can only conclude that states are despairing of usual ways to control school-related crime and violence. Another trend is assigning penalties to parents for student criminal acts.

Neither approach seems to be working, and legal challenges to these approaches are mounting. For example, there is the U.S. v. Lopez presently being considered by the Supreme Court. Also under appeal is a state court decision in Chicago, where students found with weapons through metal detectors and close police surveillance were brought to court. The trail judge dismissed the charges based on violation of the Fourth Amendment. The case is presently under appeal.

NEW STRATEGY

Perhaps increased penalties and going after parents are not the answer. Maybe prevention approaches rather than fear of penalties would be a better approach. Already, 17 states have enacted legislation to develop comprehensive

drug education programs, and 11 states have enacted interagency/committee approaches to combatting drug abuse.

Florida presents what I found to be the most comprehensive approach to coping with not just drug abuse, but all manner of school crime and violence - - one in which the emphasis is on prevention and cure, rather than on punishment. The approach is similar to those elements of this year's federal crime bill that failed to survive in the final bill that was passed. For example, the Florida legislature has created a Department of Health and Rehabilitation Services in which one of the legislative purposes is to prevent the causes of juvenile delinquency. State and local governments, along with other public and private entities are authorized to develop a comprehensive community based continuum of programs and services for children and families, including delinquent children and their families. The legislation calls for the development of a 5 year strategic plan for that purpose.

Florida also has enacted a Community Juvenile Justice System Act in 1993 designed to respond to the large number of children suspended and expelled from school and involved in juvenile crime. The law calls for the development of partnersh[illegible] between schools and the Department of Health and Rehabilitative Services to develop alternative educational programs, along with programs of vocational training, recreation, community services and substance abuse programs. Further, each county is authorized to establish a

juvenile justice council to administer and coordinate such programs and services.

Florida has also passed a Safe Schools Act which establishes a trust fund that makes money available to school districts and/or communities with high levels of criminal offenses, to develop school programs of alternative education, compensatory education and the in-service training of staff to cope with student indiscipline, crime and violence. Florida legislation also includes authorization for an interagency task force to reduce juvenile crime, especially related to motor vehicle theft. Here too, the purpose is to reduce truancy, suspension and expulsion by developing a coordinated overlay of services directed at prevention of crime, rather than assigning punishments for offenses.

Finally, even in Iowa, a state which I would have thought to be relatively free of school crime and violence, the state legislature is approaching the problem through a preventative, rather than punitive approach. The Iowa General Assembly has enacted a pilot program for character education as a strategy for maintaining a safe and orderly school. This is to be accomplished by teaching honesty, responsibility, respect and care for persons and property, self discipline, understanding, respect for and obedience to law and citizenship, and other positive characteristics. Well, I suppose this statute can't hurt, but it lacks the coordination of services and recognition that the roots of

school crime and violence are not exclusively school-based, and that the conditions leading to school crime and violence must be addressed on a comprehensive basis. Even so, at least it gives lip-service to trying to prevent school crime and violence rather than just punishing it.

Given the problems of increased prison populations, school expulsions and the like, along with continued high levels of school crime and violence, states such as Florida, and even Iowa, are leading a helpful trend. That trend is to combine legislative recognition of the need to control school-related offenses and increasing penalties for them, with a concurrent legislative design that focuses on the prevention of school crime and violence.